IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 16TH MARCH 2007 / 25TH PHALGUNA 1928

WP(C).No. 33429 of 2006(D)

PETITIONER:

THANKAMALU AMMA, W/O.CHANDUKUTTAN NAIR,
VYSIAMPURATH HOUSE, P.O. MAYANAD, KOZHIKODE-8.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS:

---

1. CALICUT CO-OPERATIVE URBAN BANK LTD.,
   KOZHIKODE, BRANCH REP. BY ITS MANAGER.

2. ASSISTANT REGISTRAR OF CO-OPERATIVE
   SOCIETIES, KOZHIKODE.

3. SPECIAL SALE OFFICER,
   CO-OPERATIVE URBAN BANK LTD., KOZHIKODE.

4. STATE OF KERALA,
   REP. BY CHIEF SECRETARY, SECRETARIAT,
   THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SMT.LATHA THANKAPPAN
ADV. SRI.M.ASOKAN
SRI.DEVAPRASANTH.P.J.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE LOAN AGREEMENT.

EXT.P2: COPY OF THE NOTICE GIVEN BY THE 2ND RESPONDENT DATED 11.12.2006.

EXT.P3: COPY OF THE AWARD MORTGAGE DATED 1.8.2004.

EXT.P4: COPY OF THE PAPER PUBLICATION IN MATHRUBHUMI DAILY DATED 6.12.2006.

RESPONDENTS EXHIBITS:

EXT.R1(a): COPY OF THE DEMAND NOTICE DATED 22.9.05.

EXT.R1(b): COPY OF THE ACKNOWLEDGEMENT DUE DATED 5.10.2005.

EXT.R1(c): COPY OF THE POSSESSION NOTICE DATED 2.1.2006.

EXT.R1(d): COPY OF THE PAPER ADVERTISEMENT IN THE HINDU NEWS DAILY DATED 16.6.2006.

EXT.R1(e): COPY PF THE PAPER ADVERTISEMENT IN DESHABHIMANI NEWS DAILY DATED 19/05/2006.

EXT.R1(f): COPY OF THE SALE NOTICE DATED 24.8.06.

TRUE COPY

P.A.TO JUDGE

S.SIRI JAGAN,J

==========

W.P.(C).No.33429 OF 2006

==========

Dated this the 16th day of March,2007

JUDGMENT

This writ petition is filed by the petitioner who is a defaulter in repayment of loan amounts due to the first respondent bank. They have filed this writ petition challenging alleged proceedings initiated for sale of the mortgaged property as per the provisions of the Kerala Co-operative Societies Act. The learned counsel for the bank brings to my attention the fact that the proceedings now initiated as evidenced by Exts.R1(a), R1(b),R1(c),R1(d),R1(e) and R1(f) are under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and not under the provisions of the Kerala Co-operative Societies Act and Rules. Although, originally a stay was granted by this court by order dated 26.02.2007, I had directed the petitioner to pay an amount of Rs.35,000/- within two weeks as a condition for extension of the stay on 13.03.2007. I directed the counsel for the petitioner to ascertain whether the petitioner has complied with the direction in my order dated 26.02.2007. Today the counsel for the petitioner submits that the petitioner was not able to raise enough funds to pay the said amount. In so far as the remedy of the petitioner against proceedings initiated by Exts.R1(a) to R1(f) lies before the Debt Recovery Tribunal, I am not inclined to exercise by

discretionary jurisdiction under the Article 226 of the Constitution of India especially, in view of the fact that the petitioner has not even complied with the directions in my interim order.

In the above circumstances, I do not find any merit in this writ petition and accordingly the same is dismissed.

S.SIRI JAGAN,JUDGE

dvs